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ABSTRACT

The debate among scholars on the historical and contemporary significance of the Founding period of the United States still continues and important questions still need to be addressed. The extent to which current judicial decisions should be governed by the intentions of the Framers, and whether contemporary historical approaches tend to undermine the authority of the U.S. Constitution are among the continuing issues. At the center of such a debate are the theories of Leo Strauss, the German-born political theorist and teacher whose followers are attempting to set the agenda for public debate on the Constitution. Straussians keep alive an old-fashioned concern for political philosophy and classic political texts that is in opposition to the behaviorist and policy analysts whom the Straussians claim have taken over the government departments in universities and turned them into departments of political science. Strauss, who taught at the University of Chicago for 20 years and who died in 1973, exerted a powerful influence over many students who, in turn, disseminated his ideas to their own students and so on through four generations. Strauss admired the moral, character-forming, civic-conscious, philosophizing nature of the ideal classical republican "regime," as Aristotle called it. "Modernity" in the philosophies of Machiavelli, Hobbes, Locke, and later thinkers shattered this ancient ideal by bringing a new realism to political thought, and Straussians believe the present crisis in the West is caused by the moral relativism and pervasive "historicism" of modern political philosophy. This document reviews a collection of influential work by Straussians Herbert J. Storing, Ralph Lerner, Martin Diamond, and others. Although there are many differences among them, it is argued that the common ground shared by almost all Straussians is the tendency to study the Founding from the standpoint of the timeless truth to be found in it, and to view the Constitution in a quasi-religious or "fundamentalist" way. (NL)

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THE FUNDAMENTALISTS AND THE CONSTITUTION

BY GORDON WOOD

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Virginia Commission on the Bicentennial of the United States Constitution
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The Fundamentalists and the Constitution

By Gordon Wood

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Foreword

The 200th anniversary of the drafting and ratification of the U.S. Constitution has brought renewed debate among scholars about the historical and contemporary significance of the Founding period. In *The Fundamentalists and the Constitution*, Gordon Wood, one of America's most distinguished historians, provides an overview of this debate. He considers its impact on such questions as the extent to which judicial decisions should be governed by the intentions of the Framers. Focusing on the teachings of Leo Strauss, whose followers have raised important questions about how we read Founding documents, Wood raises searching questions about what is at stake in these debates over the Constitution's origins. Can a study of classical political theory reveal fundamental political truths? Do contemporary historical approaches tend to undermine the Constitution's authority? Is a moral republic possible in America today? In discussing these and other provocative issues, Wood offers insight into the meaning of the Constitution for modern Americans and into the ways that seemingly "academic" arguments may profoundly influence that meaning.

The Fundamentalists and the Constitution is the first in a series of occasional papers published by the Virginia Commission on the Bicentennial of the United States Constitution. As a supplement to *The Virginia Independent*, the Commission's bimonthly newsletter, these occasional papers provide a closer examination of constitutional themes and issues. We at the Commission hope that these papers will stimulate both discussion and debate. We encourage high school and college teachers to ask us about the availability of the occasional papers for classroom use.

A. E. Dick Howard

Chairman
Virginia Commission on the Bicentennial
of the United States Constitution

1.

No other modern state has what is called a "founding" in quite the way the United States has. We Americans attribute to the revolutionary generation and to the creation of the Constitution a sacred, quasi-religious character. The Founding Fathers come to resemble Moses and Aeneas more than they do statesmen (which is why "debunking" and "humanizing" them has remained such a cottage industry). We believe that there is something unique about this "Founding" generation of political leaders, that they were giants, or demigods, or what Henry Steele Commager has called "a galaxy of public leaders we have never been able remotely to duplicate since." We look back at them with awe, with the feeling that they are irretrievably lost to us. Many Americans believe that there at the "Founding" some permanent truths about politics were established, and that we depart from them at our peril.

Although this sense of separation from the "Founding" generation has long been a part of American history and culture, the sense of the sacredness of the "Founding" has seemed especially acute during the recent bicentennial celebrations. Instead of the mechanistic language usually invoked in discussions of the Constitution—separation of powers, checks and balances, and so on—the language in much of the bicentennial literature is strangely spiritual. Everywhere there is talk of the "human soul," of the "moral foundations" of American politics, of the "founding principle," of "virtue" and the threats to "virtue," of "character," and of religion and its relation to the polity. Much of this talk is traditional American rhetoric. But part of it is new, the result of the growing influence of "conservatism" in our public life. Not just ordinary conservatism; rather a philosophical conservatism of a special kind.

More than any other single group the Straussians are attempting to set the agenda for public debate over the Constitution.

Perhaps the most remarkable fact about the scholarship of the bicentennial celebrations is the extent to which that scholarship has been colored by the students and followers of Leo Strauss, the German-born political theorist who taught at the University of Chicago in the 1950s and 1960s. "Straussians" are everywhere in government and academia, in both high and low places, in conferences, in symposiums, in books and journals. More than any other single group the Straussians are attempting to set the agenda for public debate over the Constitution. They have sought to define the terms, to organize the conferences, and to dominate the discussions. A big reason for this presence is surely their access to power and money in a conservative Republican administration. But nearly as important as governmental patronage has been their long and untiring philosophical interest in what they invariably call the "Founding," the principles embodied in America's nation-building at the end of the eighteenth century.

For a generation or more, while government departments in universities throughout the nation were being taken over by behaviorists and policy analysts and becoming departments of political science, tiny groups of scholars kept alive an old-fashioned concern for political philosophy and classic political texts. Among these minorities the most cohesive and determined were certainly the Straussians. During the 1950s and 1960s they were voices crying in the wilderness. But with the change in the national political climate and more recently with the support of a sympathetic Republican administration and the bicentennial celebrations of the Constitution, these controversial, often beleaguered Straussian scholars are at last having their day in the sun, and they are making the most of it.

Leo Strauss was a German Jew who left Germany in 1932 and came to the United States in 1938. Along with other distinguished European scholars, he became a member of the faculty of the New School for Social Research in New York. In 1949 he joined the department of political science at the University of Chicago and spent twenty fruitful years there. Before his death in 1973, he also taught at Claremont Men's College and at St. John's College in Annapolis. Strauss wrote fifteen books dealing with Western political philosophy. But perhaps more important, throughout his long career he influenced a large number of students, who in turn have passed on his teachings to their students. Now this third generation is conveying to its

students the lessons of the master, thus continuing to widen the circle of the Straussian faith.

Although Strauss once said that "a philosophy based on faith is no longer philosophy," it is a faith that the Straussians believe in; and it is a powerful one. "Straussians attract students," says one of them, "because they are able to address the souls of students."[1] Strauss's followers are less students than they are disciples. They talk about Strauss in reverential terms. Their belief in Strauss's teaching is akin to a religious belief. Straussians have an air of self-righteousness, of being, as Milton Himmelfarb has described it, among "those privileged few who, having ascended from the cave, gaze upon the sun with unhooded eyes, while yet mindful of those others below, in the dark."[2] It is not surprising that such a sanctimonious sense of privilege, together with their political conservatism, has generated widespread hostility and contempt toward the Straussians in academic circles.

The continuation of this faith, through four generations of students, is one of the most remarkable phenomena of modern American academic life. "Strauss students," says Walter Berns, a distinguished Straussian, "are extremely reticent about invoking his name," for Berns believes that "one does him honor by not speaking of him too much, lest the pupil's failings appear to be those of the teacher."[3] However effective this reticence and however widespread the hostility to Strauss's teaching, it is still surprising that we have yet no book about him.

Strauss's appeal is his effort finally to transcend historical understanding and recover the truth of past philosophers.

What is the faith that inspires such feelings? After all, the teachings of professors of political science at American universities do not usually generate religious fervor. Certainly it was not Strauss's belief that we ought to understand past political philosophers as they understood themselves and to strive to use their own terms as much as possible and avoid using modern jargon. Any historian might agree with this. Nor was it Strauss's suggestion that some past political philosophers may have engaged in "exoteric writing," hiding some of what they wanted to say from some readers. This may be a controversial way of approaching political texts, but it is not something alien to modern scholarship, and it is hardly the source of the faith Strauss has aroused.

Closer to the heart of Strauss's appeal is his effort finally to transcend historical understanding and recover the truth of past philosophers. Ultimately, Strauss believed, as the celebrated Allan Bloom, Straussian author of the recent best-selling indictment of American university life, puts it, "that the truth is the important consideration in the study of a thinker, that the truth is eternal, that one can study an old writer as one would a contemporary and that the only concern is what is written, as opposed to its historical, economic, or psychological background."[4] Although some might gibe that this sounds like an intellectual justification of Mortimer Adler's "Great Books" program—also conceived at the University of Chicago—it is perhaps not all that different from the approach of some philosophers and political scientists who are not Straussians. Some scholars besides the Straussians believe that they too are looking for truth—truth that may not be eternal, but that at least cuts across a decade or two or across several cultures at the same time. But Strauss went further: he believed that this eternal truth could ultimately be located in the writings of Plato, in a Socratic rationalism freed of all concern with historical contingency. Recovering this truth would not be easy, however, for it was overlaid by modernity and modern opinions.

At the center of Strauss's understanding of political philosophy was the fundamental distinction he made between antiquity and "modernity." Classical political philosophy had no historical consciousness; it was concerned with the right or the best political order and not with the particular sources or historical circumstances of that order. It was therefore the starting point of all philosophy. In this classical conception the right or the best political order was the highest ideal of man. Classical man sought always to rise above his earthly existence, to escape from his base passions, and to enthrone virtue and reason. Only then would man be truly civilized, truly human. Only through civic participation in a republican "regime" — where society and state, private and public were one — could man achieve his fullest development.

"Regime" was the Aristotelian category of politics that Strauss used, and that all Straussians use. It denotes not just the government that rules us but also the public world that forms us and teaches us to be what we are. It was the moral, character-forming, civic-conscious, philosophizing nature of the ideal classical republican "regime" that Strauss admired. This feature was but one measure of the fundamental separation of the ancients from the moderns.

"Modernity" in the philosophies of Machiavelli and later of Hobbes and Locke shattered the foundations of this two-thousand-year-old ancient ideal as it had been transfigured by Christianity. These modern philosophers brought a new realism to political thought; they told man to take his earthly existence seriously. No longer was man to be obsessed with the way he ought to live; he was now to base his government on the way he actually lived. In place of the high ideals of the ancients that sought to compel man to transcend his lowly passions and interests, modern governments were now to be founded on these very passions and interests. Modern man became obsessed with his particular private pursuits of happiness and his individual desires, which he calls rights. Reason was dethroned, civic participation was reduced to periodic voting, and the public good was lost in the scramble for private interests. Man now attempted to derive standards for his political order from history rather than from nature.

On the slippery slope of modernity, helped along by Rousseau and Nietzsche, man slid irresistibly toward the twentieth-century crisis of the West. Moral relativism and epistemological skepticism sapped Western man's confidence in himself and in the superiority and purpose of his civilization. This modern purpose, or "project," as the Straussians call it, aimed to use science to conquer nature and create a universal world of free and equal nations all filled with affluent and happy people. But this modern "project," unlike the classical one, rested on the fatal flaw of "historicism"—the modern belief that all human thought and action are the products of particular changing historical circumstances in which there is no "natural right," no fixed ground for reason or eternal and universal judgments.

No one is more convinced of the power of reason to resolve problems than are the Straussians.

Belief in "natural right" is crucial to the Straussian scheme of things; a classic standard of right that transcends all time and place necessarily stands in opposition to "historicism." To reject "natural right," Strauss wrote in his *Natural Right and History* (1953), is to say that all right is "positive right," that is, "What is right is determined exclusively by the legislators and the courts of the various countries." With such a positive and relativistic view of right, there can be no timeless truths, only arbitrary "values" and different "frames of reference." The result is what the Straussians see as the moral confusion and permissiveness of the present, where all standards and truths are challenged, where positive rights are created promiscuously, and where anything goes. Since the Straussians believe that the present crisis of the West was caused by modern political philosophy, they conclude that understanding and solving the crisis can only come through a recovery of classical political philosophy. No one is more convinced of the power of reason to resolve problems than are the Straussians.

2.

Strauss valued classical political philosophy precisely because of its freedom from "historicism," from the very premises that he thought were responsible for the modern crisis of the West. His entire career was devoted to working through the complicated overlay of modern opinions in order to recover what he believed to be the pure rational truth of classical thought. Only then might we have the full possibility of philosophy, of seeing with clarity and wonder the genuine way of using Socratic political thought to create healthy souls. In the end Strauss's prescriptions were more than just a little mysterious and occult.

Strauss's appeal to students thus lay not in his old-fashioned study of classical texts of political philosophy but rather in his heroic scholarly defiance of modernity with all its dreadful relativism, skepticism, and nihilism. Strauss offered what many students want desperately—a rational, scholarly, intellectually respectable, but still apparently secular refuge against the confusion and erosion of values in our

modern world. That such a refuge might be properly appreciated only by the initiated few certainly added to its appeal.

All of this has combined to make the Straussians prominent conservatives in present-day American politics. Indeed, at least one of them sees the Straussians as "the most powerful conservative intellectual force in the academy" today.[5]

Strauss confined his studies of Western political philosophy to classical antiquity, to medieval Judaism, and to early modern Europe, and, according to Charles R. Kesler, "did not write on the American regime as such."[6] But Strauss's students have no doubt that their "primary concern, as political scientists, should be the study of our own regime."[7] And study it they have. During the two recent bicentennial celebrations, of the Declaration of Independence and of the Constitution, they have held conference after conference, written essay after essay. The collections reviewed here contain only some of the most recent and important examples of the Straussian output.

Not all the contributors to these collections of course are Straussians or even political conservatives. And not all the conservatives are Straussians. But most of the authors and editors are to one degree or another connected with Strauss or his students or are sympathetic with Strauss's perspective. Among these are William B. Allen, Walter Berns, David Broyles, Joseph Cropsey, Martin Diamond, Robert A. Goldwin, Charles R. Kesler, William Kristol, Robert H. Horwitz, Ralph Lerner, Gary L. McDowell, Wilson Carey McWilliams, Harvey Mansfield, Jr., Thomas Pangle, and Herbert J. Storing.

American political philosophy attracts Straussian scholars partly because of what the United States means in the Straussian project. America is no ordinary "regime." It was born at the very birth of modernity itself. It is, as Joseph Cropsey writes in the volume edited by Horwitz, "a microcosm of modernity... an arena in which modernity is working itself out." Thus Straussian students bear a burden that the master was spared. It is not easy to defy modernity while living in the very regime that embodies it. On its face the United States does not appear to be a fit polity for nourishing the human soul. Here is Kesler's "syllogistic way" of posing the problem:

> Thomas Hobbes is (in Walter Bern's phrase) "the founding father of liberalism."
>
> The United States is a liberal democracy.
>
> Therefore, Thomas Hobbes is the founding father of American democracy.[8]

The problem of the American regime is an immense one, and it has led to the Straussians' fascination with the Founding. What the Straussians want to know is the extent to which the United States, founded on the modern realistic principle of self-interest, is by that fact an imperfect or flawed regime. If America was born with modernity, can it ever be the kind of classical polity that inculcates virtue and fulfills human potential? Would Aristotle judge America to be a genuine political community? What is the role of religion in our politics? Does our Constitution require any duties of our citizens? Is virtue reconcilable with individual rights? Does the American regime lower the expectations of political life to the point where any other regime would be an improvement? Does America have any moral foundations at all? Can such a modern regime be a fit defender of Western civilization against the hostile forces of modern barbarism, especially as they are expressed by the Soviet Union?

If America was born with modernity, can it ever be the kind of classical polity that inculcates virtue and fulfills human potential?

These are the issues that concern Straussians most deeply. Perhaps the flavor of their scholarship can be sensed further from the titles of some of the essays in these collections. So Goldwin writes on "Of Men and Angels: A Search for Morality in the Constitution"; Diamond on "Ethics and Politics: The American Way"; Horwitz on "John Locke and the Preservation of Liberty: A Perennial Problem of Civic Education"; Cropsey on "The

United States as Regime and the Sources of the American Way of Life"; Berns on "Religion and the Founding Principle" and on "The New Pursuit of Happiness"; McWilliams on "Equality as the Moral Foundation for Community"; etc.

As the titles suggest, the Straussians see "the founding documents" of America, in Cropsey's words, as "a gigantic argument, subsequent propositions in which are the decayed or decaying moments of modern thought, superimposed on relics of antiquity."

Labeling all the scholars I have mentioned as Straussians is both accurate and misleading: it does not mean that they think alike about the Founding or that they even studied with Strauss or a Straussian student. Some are like Wilson Carey McWilliams, who when asked whether he was a Straussian, said, No, but he was a "fellow-traveler." The arguments Straussians have among themselves can be as bitter as any in academia, and that is bitter indeed. Harry Jaffa, a prominent Straussian, has vigorously attacked several of his colleagues, and Walter Berns has replied by accusing Jaffa of assuming an "apostolic succession" and aspiring to be "the sole heir" of Strauss's "legacy" and "the guardian of the faith."[9] To an outsider the sources of the sectarian squabbles within the Straussian faith are often bewildering.

Martin Diamond has been at the center of much internal Straussian strife because he was the first to confront directly the problem of America's birth in modernity. His influence is widely recognized. Senator Daniel Patrick Moynihan is quoted in the Congressional Record after Diamond's death in July 1977 as saying that "Martin Diamond almost singlehandedly established the relevance of the thought and doings of the Founding Fathers for this generation." In an article in the 1959 *American Political Science Review* entitled "Democracy and *The Federalist*: A Reconsideration of the Framers' Intent," Diamond showed how Madison in *The Federalist* sought to use selfishness to maintain the "regime" in the absence of "better motives." "The Madisonian solution," Diamond wrote, "involved a fundamental reliance on ceaseless striving after immediate interest (perhaps now immediate gratification)." Such a polity based so blatantly on interest seemed to have no moral foundations at all.

Commerce does not make for classical virtue, but it does create a lot of orderly, moderate, and self-controlled citizens.

Much of the Straussians' subsequent polemics among themselves revolves around the problem Diamond posed: How, as Walter Berns rephrases it, can "the United States, a nation founded on the principle of self-interest" find the way "of somehow moderating self-interest?" Many of his fellow Straussians felt that Diamond had gone too far in casting doubt on the moral foundations of the United States, and Diamond was forced to return to the theme again and again. In his essay "Ethics and Politics," originally written in 1976 and included in the Horwitz collection, Diamond attempted to answer his critics, relying essentially on the insights of Tocqueville.

Although the Founding Fathers wanted the American regime to be based on self-interest, it did not follow, Diamond argued, that all morality was thereby lost. "However much we are not a regime in the ordinarily recognizable Aristotelian sense," American self-interest has the power of inculcating small, middle-class virtues that "reach at least to decency if not to nobility." Commerce does not make for classical virtue, but it does create a lot of orderly, moderate, and self-controlled citizens.

Many Straussians follow Diamond in putting the best face on the modernity of America that they can. Thomas Pangle argues that commerce of a predominantly Jeffersonian agricultural sort took on "a distinctly moral hue" and probably afforded "a stronger incentive to civic involvement—to a communal or fraternal spirit at the local level, and to an attentive following of national politics—than did any of the older and so often unsuccessful appeals to nobility, sacrifice, and pious otherworldliness." Other Straussians such as Morton J. Frisch attempt to turn the entire problem around and see modernity and its stress on individual rights as an improvement on antiquity. And still others such as Charles R. Kesler even claim that "the sovereign distinction between ancients and moderns" is being arbitrarily imposed on American political life without a genuine Straussian concern for the actual words of the Founding Fathers.

In just such ways is one part of Strauss's teachings invoked to combat another part. As the fourth generation of

Straussians emerges, the faith has come apart, the interpretations have multiplied, and the arguments have intensified. There are now east coast Straussians and west coast Straussians, and many different sects in between. Because, as Pangle puts it, "it is the Founders who laid down our most basic rules, who established the primary terms of our moral and civic discourse," the writings of the Founders are for the Straussians the scripture of the American creed, and thus like the Bible or the Talmud the source of continuous sectarian controversy and ever more refined readings.

From the Straussians' interpretations of the sacred document of the Founding flow current political positions.

The stakes of this constitutional hermeneutics are high. For from the Straussians' interpretations of the sacred document of the Founding flow current political positions. Thus Walter Berns argues, based on his tortured reading of the writings of the Founders, that "whereas the extent of the freedom accorded religious opinion could and must be absolute, the extent of the freedom accorded political opinion could not and must not be absolute." And Edward J. Erler suggests that the Founders' belief in the right to property as a natural right may be grounds for rolling back the modern welfare state. Indeed, the Straussians' commitment to natural right makes all historically derived rights seem unjustifiable to them, particularly those recently discovered by the Supreme Court.

With so much political significance riding on their scholarship, it is not surprising that the Straussians' textual readings have been very close and their moral seriousness very heavy. These characteristics have given the Straussians, all of them political scientists or political theorists, some advantages over many historians in dealing with the revolutionary era. Although historians now are falling over themselves in their attempts to discover republicanism in American history and have gone far beyond the Straussians in exploring the problems of the Founders with commerce, in the past they often did not pay as much attention to words of the Founding Fathers as they ought to have. So that despite the Straussian aversion to "historicism," Straussian scholars like Diamond sometimes made more important contributions to historical understanding of the origins of the Constitution than many historians did. Precisely because the Straussians read particular texts so closely and carefully, they recovered meanings that we tended to forget. They saw, for example, that republicanism and democracy in the late eighteenth century had different meanings and values. Before historians did so, the Straussians appreciated the fact that republicanism as passed down from classical antiquity meant not just an elective representative government but the virtue of self-sacrifice and an antipathy to commerce. And they saw, sometimes more clearly than many historians, that the Founders' great republican faith in the people was limited by their fear of direct democracy or of interested majorities. The Straussians' view of the late eighteenth century as a watershed of modernity has also enabled them to appreciate better than some historians the originality of the American Revolution.

Yet despite the Straussians' contributions to history, they are not in fact historians. They are not really concerned with the way historians understand the past; they are usually interested, for example, in only a few documents of the late eighteenth century—the Declaration of Independence, the Constitution, the Convention debates. They have no conception of the process of history. They do not study the Founding to see how it flows out of the previous events and into the subsequent events of American history. Instead they study it to discover the timeless truth of American politics. Promoting this truth, as the Founders did, is the cause to which the Straussians are devoted; it is as Charles R. Kesler puts it, "a theoretical undertaking whose benefits may extend to the most distant posterity."

3.

In searching recently for this truth about the Constitution the Straussians apparently have become more interested in studying documents surrounding the Founding other than the few they have hitherto concentrated on. This new interest may help to explain Herbert Storing's compilation of seven volumes of Anti-Federalist writings and the five-volume collection of documents put together by Philip Kurland and Ralph Lerner.

The Anti-Federalists were the opponents of the Constitution in 1787 and 1788, and as such they have not had an easy time getting heard in our culture. They were a loose coalition—so loose and disparate that generalizations about them have always been risky. In pamphlets, speeches, and letters they attacked the Constitution during the ratification proceedings in the states. They included such prominent leaders as Patrick Henry, George Mason, and Samuel Adams, who feared the Constitution didn't protect the rights of persons or states and who became reconciled to it only when the Bill of Rights was added. They also included many ordinary people—agrarians, debtors, and paper-money advocates who did not want to turn over control of local affairs to a central government. Such Anti-Federalists could not match the supporters of the Constitution in the quantity or quality of their arguments. In fact, they often found the press closed to them. Out of a hundred or more newspapers printed in the late 1780s only a dozen supported the Anti-Federalists, because, as one of them complained, editors were "afraid to offend the great men, or Merchants, who could work their ruin." Only during the past thirty years have Anti-Federalist documents in any number been collected and reprinted. Storing's seven volumes are welcome indeed; they make up the fullest collection of Anti-Federalist writings we have had in the past two hundred years and represent a broadened definition by the Straussians of the important documents of the Founding.

The fact that both Straussian conservatives and radical progressive scholars...are simultaneously claiming the Anti-Federalists for their own is a symptom of the current disarray in American politics.

The first volume is an introduction by Storing (also available in a separate paperback entitled *What the Anti-Federalists Were For*), and the last volume is an index. The other five contain not only pamphlets and newspaper essays written by the Anti-Federalists, but also a selection of Anti-Federalist speeches in the state ratifying conventions including impressive ones by the ex-weaver William Findley of Pennsylvania and the middling merchant Melancton Smith of New York, who both argued that the elevated nature of the new national government was designed to keep ordinary men like themselves out of federal office.

Storing died suddenly in 1977 before these volumes were published, and his student Murray Dry saw them through the press. Storing was a student of Leo Strauss, but an engaging teacher in his own right, and his many students have helped to keep the Straussian faith alive. At first glance this Straussian faith does not seem to have much to do with the Anti-Federalists, for political conservatives traditionally have ignored the opponents of the Constitution. In fact the Anti-Federalists have usually belonged to the progressive left in American politics. From Charles Beard to Frederick Jackson Turner progressive or liberal historians have seen Anti-Federalists as spokesmen for the small democratic farmers victimized by the commercial-business juggernaut led by Alexander Hamilton. But with the rise of conservative populism, rooted in anti-eastern establishment feelings—the California tax revolts of the 1970s were a case in point—the democratic localism of the Anti-Federalist had taken on a decidedly conservative appeal. Ronald Reagan became the quintessential Anti-Federalist in his opposition to Washington centralization. Still, the fact that both Straussian conservatives and radical progressive scholars — in a recent book, *The Case Against the Constitution* — are simultaneously claiming the Anti-Federalists for their own is a symptom of the current disarray in American politics.[10]

What some Straussians and some progressives both find particularly appealing about many of the Anti-Federalists is their commitment to a small republic and local government close to the people. In their opposition to the Constitution the Anti-Federalists invoked a conventional eighteenth-century notion made famous by Montesquieu that a republic could exist only in a small country with a compact, homogeneous population having a similarity of interests. Monarchies with their unitary authority imposed from the top down could govern in large and diverse countries, but not republics. Based as they were on consent from the bottom up, republics had to be held to-

gether by a moral consensus and sameness of interests among the people. With too many diverse and clashing interests and view points, a republic would fly apart. Only in light of this traditional idea that republics had to be small can one appreciate the boldness and originality of the Federalists' proposal for a single elevated and extended republic covering half a continent. That is why Hamilton, Madison, and Jay had to spend so much time in *The Federalist* explaining to a skeptical public just how "strictly republican" the new Constitution really was.

Although the Storing volumes contain documents useful for historians and on their face show little Straussian influence, such is not the case with the volumes edited by Kurland and Lerner. Although the two editors have greatly expanded the documents of the Founding, their five volumes remain a strange collection, but obviously the product of an immense amount of work. Kurland and Lerner have combed hundreds if not thousands of documents over two centuries of early modern English and American history and extracted from them pages or paragraphs that presumably reveal the sources of the various parts and specific provisions of the Constitution. They have arranged their excerpts in the order of each provision of the Constitution. Under Article I, Section 2, clause 2, which describes the requirements for a member of the House of Representatives, for example, Kurland and Lerner have included snatches from nine different documents, ranging from a paragraph or so from Blackstone's *Commentaries* (1764) to a few pages from Joseph Storey's *Commentaries* (1833).

It is hard to know for whom these snippets of documents are intended. Lawyers may find them a useful starting point for a constitutional brief, but the clippings in these volumes will hardly suffice. Historians, too, may find them useful in launching a research topic, but hardly more than that. What did Kurland and Lerner hope to accomplish by putting together this collection?

One way of making sense of the collection is to see it in Straussian terms. (Lerner was in fact a student of Strauss.) These are the documents of the "Founding," that "singular moment," as the editors call it, that "occasion of rare interest and value for discovering anew the foundations of a complex political and economic order." Although the editors have drawn some of their excerpts from writings of the seventeenth and eighteenth centuries, they have inevitably concentrated on the "Founding," which they extend up through the end of the Marshall Court in 1835. This is certainly a broader definition of the "Founding" than many Straussians accept, but it is based on the same widely shared principle: that the writings of the Founders "clearly enjoy a special standing in the study of American constitutionalism." The editors seem to presume that studying them will give us virtually all the fundamental truth we need to know about our constitutional system.

It is a breathtaking presumption, but it is not that of the Straussians alone. Indeed, the Straussians could not have become quite as prominent as they are during the current bicentennial celebrations if they had not struck a responsive chord. The Straussian conception of the Constitution as a contrivance of reason and the Founding as a monumental event in American history rests on a deep and longstanding popular belief in the sanctity of the Constitution and the uniqueness of the Founding Fathers. Every successive generation has seen the revolutionary generation as distinct, separated from the rest of American history by an immense political and cultural chasm. By the early nineteenth century Americans were already picturing the Founding Fathers as demigods. Overnight, it seemed to Woodrow Wilson writing in his book *Congressional Government*, Americans had turned the Constitution into an object of "an indiscriminating and almost blind worship." Although most Americans probably cannot describe the articles of the Constitution with any accuracy, they certainly revere the Constitution and believe profoundly in the wisdom of the Founders.

The Straussians' commitment to natural right makes all historically derived rights seem unjustifiable to them, particularly those recently discovered by the Supreme Court.

Charles Beard's book *An Economic Interpretation of the Constitution* raised a storm of controversy three quarters of a century ago because in it he sought to strip away the divine trappings the Constitution had been wrapped in and expose it as the product of contingent historical circumstances and the clashing interests of mortal men. Beard's influence was profound, and his revolt against formalism greatly affected American history-writing in general during the first half of the twentieth century. But his conception of the making of the Constitution by itself has not had much staying power. Since 1913 Beard's narrow argument—that the framers' interest in the Constitution was based on their expectation that their holdings of national bonds would increase in value under a stronger national government—has been torn to shreds and no one pays attention to it anymore. But even Beard's larger aim—that the Constitution ought to be seen as the consequence of historical circumstances and contending interests—has not had the attraction for historians that it should have had. America's belief in the "Founding" has generally overwhelmed Beard's historical revisionism.

Of all the Founders Jefferson most forcefully led the way, though inadvertently, to the destruction of the older classical world

The reason for this is not simply that the quasi-religious view of the Founding reinforced by the Straussians has been so powerful, but that Beard ultimately was not a good historian. He was certainly right to treat the creation of the Constitution as the product of particular historical circumstances. But in his eagerness to penetrate the godlike aura surrounding the Founding Fathers and to show them to be mortal men no different from twentieth-century American politicians with interests to protect and promote, he did violence to the differentness of the past and the distinctiveness of the generation of the Founding Fathers.

The truth of the matter is that the myth of the Founding Fathers, and of their uniqueness in American history, is rooted in historical fact. The Founding Fathers do not resemble the political bosses of Cook County; they were a different kind of politician, indeed different from all subsequent American political leaders—not because they were divinely inspired, or immune from worldly passions and interests, but because they were the products of different historical circumstances.

Despite their acceptance of the reality of interests and commerce, the Founding Fathers had not yet abandoned the classical tradition of civic humanism—the host of values transmitted from antiquity that dominated the thinking of nearly all members of the elite in the eighteenth-century Anglo-American world. By the late eighteenth century this classical republican tradition was much attenuated and domesticated, tamed and eroded by modern commercial developments. But something remained, and the Founders clung to it. They still saw themselves ideally as a leisured, cosmopolitan, liberally educated gentry bound by a classical patrician code of disinterested public leadership. However much they prepared the way for the individualistic, egalitarian, and democratic future of America, they were not modern men.

They stood for a classical world that was rapidly dying, a world so different from what followed — and from our own—that an act of imagination is required to recover it in all its fullness. They believed in the people and in democracy, to be sure, but not our modern democracy of competing political parties and politicians running for office. They accepted the reality of clashing interests in society, as Madison's *Federalist* No. 10 so brilliantly shows, but for them government was not merely the setting for furthering these interests. It was also a means of moral betterment. What modern American politician would say, as James Wilson said at the Philadelphia Convention, that "the cultivation and improvement of the human mind was the most noble object" of government? Of all the Founders Jefferson most forcefully led the way, though inadvertently, to the destruction of the older classical world, both by stressing the individual's right to pursue happiness and by championing democracy through his Republican party. Yet he could in 1787 urge a Virginia colleague: "Cherish...the spirit of our people, and keep alive their attention. Do not be too severe upon their errors, but reclaim them by enlightening

them." To enlighten them Jefferson, while in France, even badgered his fellow Virginians to erect as the new state capitol in Richmond a magnificent copy of the Maison Carrée, a Roman temple at Nimes from the first century, AD. Jefferson's aim in presenting such classical buildings to his fellow Americans for "their study and imitation" was "to improve the taste of my countrymen, to increase their reputation, and to reconcile to them the respect of the world and procure them its praise." It is not surprising that the first six presidents all urged the formation of a national university. As Ralph Lerner points out, all the Founding Fathers saw themselves as oral and intellectual teachers as well as statesmen.

The Straussians have a lot in common with lawyers and judges who believe that the meaning of the Constitution can be found only in the "original intention" of its framers.

With the premature deaths of Diamond and Storing, Lerner has emerged as the most historically minded of the Straussians concerned with the Founding, and this shows in *The Thinking Revolutionary*, a collection of his essays. Lerner shares the historian's assumption that it is wise "to treat the past, including our national past, as different or as possibly even strange.... By preserving some sense of possible alienness we leave ourselves open to being surprised and even to learning something." We certainly do learn something, in fact a great deal, from this intelligent collection. Lerner discusses the different ways several of the Founding Fathers—John Adams, Benjamin Franklin, and Thomas Jefferson—tried to educate the American public to the demands of a new society. Even the Supreme Court in the first decade of its history acted as a "republican schoolmaster" to the nation. Lerner includes as well two sensitive papers, one on the inevitable tragedy of the Founding Fathers' treatment of the Indians and another on Tocqueville's gloomy discussion of the three races in democratic America. The issues raised in these chapters are morally disturbing, but Lerner avoids any simple-minded righteous preaching and instead describes with un-Straussian irony the awful predicaments in which all the participants were trapped. Lerner concludes with a powerful analysis of the conflicting ideas the Founding Fathers had about commerce and its relation to republicanism. He sees the advocates of "the commercial republic" among the Founders as deliberately promoting a new order and rejecting the older classical one with all its "constraints and preoccupations based on visions of perfection beyond the reach of all or most." There is not much doubt about this rejection in Lerner's mind, for the Founders were "exceptionally clear—and sharpsighted moderns who knew what they were rejecting and why." In remarks like this Lerner reveals his Straussian confidence in rational deliberative thought: the Founding Fathers had "a clear, calm understanding" of their situation; most of the rest of us do not.

Lerner does not always wear his Straussianism on his sleeve. Not only does he often display irony and show historical sensitivity to the different past of the eighteenth century, but at one point he writes as if the historicism deplored by other Straussians was acceptable. "Circumstances, above all," he says, "must be given their due....Acts that were defensible or necessary at one time or place lost that character when circumstances altered." But ultimately Lerner remains the political philosopher who disdains a historical approach to the ideas of the Founding Fathers. He believes that recent historians of the American Revolution—he has in mind Bernard Bailyn, among others—have distorted the Founding, by turning rational enlightened thought into ideology, the mere expression of particular historical circumstances.

This is not surprising, for historians by trade tend to treat ideas as ideology rooted in specific social circumstances. They want to know when, where, and why particular men and women spoke and wrote as they did. But for Lerner, the political philosopher, the cost of this kind of historicism is high. Such history writing, he believes, diminishes the role of reason and weighty deliberation in the past, lumps "the rare and thoughtful" in with "the ordinary and banal," and transforms the gravity and high-mindedness of political thinking into sociology. For the ideological historians, Lerner says, there are no rational, philosophical debates in the

past; there is "no instance in which a powerful searching mind engages with another such mind." Lerner is mistaken on many of these points, for he assumes that writing about the sociological background of a debate precludes writing about its reasoned exchanges. The ideological historians he mentions, such as Bernard Bailyn, have in fact done both; historical explanation is multifaceted. But Lerner is not entirely wrong when he suggests that the ideas the ideological historians write about often "remain strangely evanescent," somehow not entirely the consequence of "the studied intentions of the thoughtful" and somehow not entirely under the control of those who express them.

In place of recent ideological history, Lerner offers "a more rewarding approach to the past," that of the political philosopher; indeed the quarrel he has with the historians is really the quarrel of two different scholarly disciplines, two different ways of looking at the world. Lerner wants to show that the ideas of the revolutionaries are "the conscious articulations of extraordinarily thoughtful men" who "thought for themselves" and that these ideas mattered because the Founders acted on them. It was, Lerner suggests, a great day for rational thinkers to be alive, but there were not many of them, "for the thoughtful, as distinguished from the influential, are always few." If only historians, Lerner implies, could study these thoughtful few instead of "referring," as they now do, "to the acts and beliefs of the many," then maybe, just maybe, we could restore reason to its rightful place in our politics.

Many of our most cherished principles of constitutionalism associated with the Founding were in fact created inadvertently. They were the products not of closet philosophizing but of contentious political polemics.

Lerner reflects a common complaint among Straussians and some neoconservatives. But the rot of historicism has gone too far. Historians today can recognize the extraordinary character of the Founding Fathers while also knowing that those eighteenth-century political leaders were not outside history; they were as enmeshed in historical circumstances as we are, they had no special divine insight into politics, and their thinking was certainly not free of passion, ignorance, and foolishness. Despite all the "informed and weighty deliberation" that Lerner talks about, they no more satisfied their confused and clashing intentions than we do.

For many of them the Constitution framed by the Philadelphia Convention was a failure. The product of compromises over three and a half months of deliberations, it was thus unlike anything anyone had quite meant to create. Washington thought it wouldn't last twenty years. Even James Madison, who more than any other single person was responsible for it, was in despair for its future. He had wanted among other things a national authority to veto all state legislation, and without this national veto power he thought, as he told Jefferson in September 1787 just before the convention adjourned, the Constitution would "neither effectually answer its national object nor prevent the local mischiefs which everywhere excite disgusts against the state government."

He was wrong about this, as he was wrong in other of his predictions. None of the Founding Fathers could anticipate the future any better than we can; and many of them were bewildered, frightened, and awed by the emerging democratic world they had created. In 1799 a thoroughly scared group of Federalists urged George Washington to come out of retirement and once again stand for the presidency. Washington refused on the grounds that the emerging new era of popular party politics made the candidacy of someone like him irrelevant. In America now, he said, personal influence and distinction of character no longer mattered. Members of one party or the other could "set up a broomstick" as a candidate, call it "a true son of Liberty" or a "Democrat" or "any other epithet that will suit their purpose," and the broomstick would still "command their votes in toto!"

4.

So the Straussians are right to see the end of the eighteenth century in America as a point of transition between an older classical republican world and a new democratic indi-

vidualistic, commercial world. But they are wrong to see this transition occurring only in political philosophy, set apart somehow from dynamic social circumstances. And they are wrong to see the Constitution as having timeless and universal meaning embodied in the philosophical aims of the Founders and discoverable through textual exegesis. In this respect the Straussians have a lot in common with lawyers and judges who believe that the meaning of the Constitution can be found only in the "original intention" of its framers. Indeed, a prominent young Straussian, Gary McDowell, a former Justice Department official, is widely acknowledged to have written Attorney General Edwin Meese's speeches calling for a return to "a jurisprudence of original intention." Many conservatives fear that unless judges are forced to anchor their constitutional interpretations in the "original intention" of the Founding Fathers, they will be free to interpret the Constitution any way they want.

The Straussians fear "historicism" because they know that historical understanding tends to dissolve faith in absolutes.

So long as "original intention" is confined to jurisprudence and not taken literally, the theory may be a legitimate and useful legal fiction for controlling judicial discretion. But historically there can be no real "original intention" behind the document. Not only were there hundreds of Founders, including the Anti-Federalists, with a myriad of clashing contradictory intentions, but in the end all the Founders created something that no one of them ever intended. For historians' ideas do not always remain ideology, do not remain rooted in the specific circumstances of time and place. Ideas can, and often do, become political philosophy, do transcend the particular intentions of their creators and become part of the public culture, become something larger and grander than their sources.

Straussians do not always appreciate this point. Rationalists that they are, they tend to see the consequences and the developing significance of the Founders' thought as deliberately planned and intended. The truth is that many of America's greatest constitutional principles—separation of powers, checks and balances, federalism, judicial review—were not clearly in the minds of the framers in the summer of 1787 when they set about forming a new national government. Sometimes, as in the case of separation of powers, Americans had used these terms earlier, but in the summer of 1787 they did not yet have the meaning they would later acquire. Their significance emerged only in discussion. Many of our most cherished principles of constitutionalism associated with the Founding were in fact created inadvertently. They were the products not of closet philosophizing but of contentious political polemics. Only because the Anti-Federalists in the ratification debates, for example, denied the possibility of two legislatures operating simultaneously over the same territory were the supporters of the Constitution compelled to work out the idea of federalism. In a number of issues the Founding Fathers did their creative thinking on their feet, as it were, in the heat and urgency of debate. To discover "the studied intentions of the thoughtful" and the "true meaning" of the Constitution in such circumstances is not easy.

The Straussians think differently. Walter Berns, who is one of the most pugnacious and articulate of the Straussians, believes that "there is nothing obscure about the text [of the Constitution], or nothing so obscure as to defy a search for its true meaning." Only by studying the Founders' text and their "works, such as the *Federalist* where that text is elucidated," says Berns, can we begin to understand why it has lasted so long, while other nations' constitutions have come and gone. One would have thought the answer to the Constitution's durability lay in the view recently expressed by Justice William J. Brennan:

> The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.

But Berns in his book *Taking the Constitution Seriously* quotes Brennan's statement (more than once) only to express his outrage over it.

Brennan's conception, Berns argues, is easily stated but not so easily carried out "because there is typically no agreement on what is required to deal with the problems or meet

the needs. All sorts of Americans...have ideas as to these matters, but they do not always or usually agree," including justices of the Supreme Court. Of course, they do not agree, but why should Berns be frustrated by that? The intellectual life of lawyers, jurists, professors, politicians, and others involved with the Constitution is made up of struggles over getting people to accept different meanings of that Constitution. One may disagree with a particular meaning that Justice Brennan may impose on the Constitution, but his description of its adaptability through time is incontestable. We may try to freeze the meanings of words, but the intellectual struggles over meanings and the historical process are relentless. That's how the culture changes. But of course it is recent changes in the culture, particularly in the judicial culture, that the Straussians would like to reverse.

Berns is irritated by the contention over meaning and particularly by appeals to anything but the text itself. If time and history, and not the constitutional text, are to provide the standard by which judicial decisions are to be measured, then, Berns believes, any interpretation goes, any construction is acceptable. "Why, then, bother with a constitution at all?"

Berns's exasperated appeal to the original text of the Constitution as the only standard to which we ought to refer in order to end the squabbling over meaning reminds one of nothing so much as the experiences of those nineteenth-century American Protestants who, bothered by the hosts of contending denominations and sects, sought to cut through the nearly two thousand years of Christian history and accumulated paraphernalia of bishops, presbyters, priests, and doctors of divinity and return to the fundamentals of the Scriptures. There in the black and white of the document, they said, much as Berns does today, is the basic truth, and you need go no further than the text to find it. Otherwise why bother with it? What good is it?

In the end Berns, like most other Straussians, has no feel for history and for what history does. He is struck by "how little [the Constitution] has had to be changed or, for that matter, adapted." He seems unwilling to admit that this is because the text of the Constitution is so general and so brief, and all its interstices have been filled in by two hundred years of judicial interpretation and experience. The president's cabinet, the independent regulatory agencies, the structure and practices of political parties, the practice of judicial review, indeed most of the means by which we carry on our governmental business, are all unmentioned in the Constitution and are the products of historical experience.

During these bicentennial celebrations we miss the point of America's historic political success if we think it was simply the result of something that took place two hundred years ago. If that were so, then exporting that text to other peoples would solve a lot of problems in the world. The secret to America's political success cannot be found in any piece of paper or even in the thoughts and deeds of the men who framed the Constitution two hundred years ago. Rather the secret lies in our society and culture, which have been shaped by our entire historical experience.

Perhaps it is good rhetorical strategy—both in politics and in jurisprudence—in opposing unwelcome constitutional decisions to invoke the Constitution as fundamental scripture, but it is not the way a historian ought to use the past. Perhaps too it is a useful fiction for us to believe that the Founders were men of genius who created once and for all the fundamental principles of our government, but that fiction scarcely represents the historical truth. It may be an exaggeration, but only a small one, to say that our Constitution is no more important to the longevity and workability of our government than the Magna Carta is to the longevity and workability of the British government. Our Constitution is as unwritten as theirs.

The secret to America's political success... lies in our society and culture, which have been shaped by our entire historical experience.

The Straussians fear "historicism" because they know that historical understanding tends to dissolve faith in absolutes. But they do not appreciate that "historicism" is as restrictive as it is permissive, as conserving as it is liberating. Historians know that the meaning of the Constitution has changed and will continue to change.

They also know that no one is free to give whatever meaning he or she wants to it. In our choice of interpretations we are limited by history, by the conventions, values, and meanings we have inherited. If anyone in our intellectual struggles violates too radically the accepted or inherited meanings of the culture, his ability to persuade others is lost. The problem of Judge Bork during his nomination hearings was that he seemed in the eyes of many of the real conservatives in the Senate to be antagonistic to some of these inherited meanings in our constitutionalism, and was thus in fact a radical. Giving up a timeless absolute standard does not necessarily lead to moral and political chaos. History, experience, custom are authentic conservative boundaries controlling our behavior.

Seeing the Constitution in the fundamentalist way that Americans tend to do, and that Straussian scholarship reinforces, diminishes our respect for history. A wise southern historian, Frank Craven, once put his finger on the problem in creationism: "The veneration we show for the achievement of men who are increasingly removed from the age in which we live," he wrote, has tended to cut us off "from the benefit of a historical tradition, properly speaking." For all the time and energy we spend in writing and reading history, we Americans do not very often think historically. We do not tend to see our institutions, our culture, or our society as the products of incremental developments through time.

In this respect the Straussians are peculiarly American sorts of conservatives, basically scornful of historical experience and the restraints it imposes, and eager to change things. Their conception of the Founding only serves to increase our political and judicial flightiness. What we need instead is real conservatism, which entails less veneration for the Founding Fathers and a deeper sense of the historical process. Understanding our entire political heritage, not just the Founding, will give us about as durable and as truly conservative a standard for groping our way into the future as we are likely to get.

Endnotes

[1] Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* (University of Chicago Press, 1987), p. 297; Werner J. Dannhauser, "Leo Strauss: Becoming Naive Again," *The American Scholar*, No. 44 (1974–1975), 637.

[2] Milton Himmelfarb, "On Leo Strauss," *Commentary*, No. 58 (1974), p. 64.

[3] Dannhauser, "Leo Strauss: Becoming Naive Again," p. 637; Walter Berns, "A Reply to Harry Jaffa," *National Review* (January 22, 1982), p. 44.

[4] Allan Bloom, "Leo Strauss," *Political Theory*, No. 2 (1974), p. 385.

[5] Charles R. Kesler, "Is Conservatism Un-American?" *National Review* (March 22, 1985), p. 28.

[6] Kesler, "Is Conservatism Un-American?" p. 29.

[7] Strauss and Cropsey, *History of Political Philosophy*,, p. 932.

[8] Kesler, "Is Conservatism Un-American?" p. 29.

[9] Berns, "A Reply to Harry Jaffa," p. 44.

[10] See *The Case Against the Constitution: 1787–1987*, John F. Manley and Kenneth M. Dolbeare, eds. (M.E. Sharpe, 1987).

[11] This was a point also made recently by Ralph Ketcham in *Presidents Above Party: The First American Presidency, 1789–1829* (University of North Carolina Press, 1984).

In 1985, the Virginia General Assembly established the Virginia Commission on the Bicentennial of the United States Constitution. Working with organizations throughout Virginia, the Commission has developed an array of programs to increase public awareness of the history of the Constitution and Virginia's role in that history. The Commission is staffed by the Center for Public Service at the University of Virginia.

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